

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES CLASBERRY,

Plaintiff(s),

vs.

ALBERTSONS, LLC,

Defendant(s).

Case No. 2:14-cv-00774-JAD-NJK

**ORDER SANCTIONING PLAINTIFF
AND ATTORNEY RAMZY LADAH**

This matter is before the Court on Plaintiff and Attorney Ramzy Ladah's failure to attend a mandatory settlement conference on November 5, 2015 ("Settlement Conference"). *See* Docket No. 25. On November 19, 2015, the Court issued an order sanctioning Plaintiff and Mr. Ladah, jointly and severally, in the amount of Defendant's reasonable attorneys' fees and costs incurred in preparing for and attending the Settlement Conference. Docket No. 28. The Court instructed Defendant to submit, no later than December 1, 2015, a declaration and documentation substantiating its costs and attorneys' fees incurred in preparing for and attending the Settlement Conference and ordered Plaintiff to file any response no later than December 7, 2015. *Id.* Although Defendant timely filed its documentation and declaration, Docket No. 29, Plaintiff failed to file a timely response. Docket No. 30. Only after the Court ordered Plaintiff to respond a second time did Plaintiff submit a response. Docket No. 31.

For the reasons discussed more fully below, the Court hereby **SANCTIONS** Plaintiff and Mr. Ladah, jointly and severally, in the amount of \$2815.35.

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II. REASONABLE ATTORNEY FEES

Reasonable attorneys' fees are determined by state law where a federal court is sitting in diversity. *Mangold v. Cal. Public Utilities Com'n*, 67 F.3d 1470, 1478 (9th Cir. 1995). In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 548-49 (Nev. 2005) (quoting *University of Nevada v. Tarkanian*, 879 P.2d 1180, 1188, 1186 (Nev. 1994)). One permissible method of calculation is the lodestar approach, which involves multiplying "the number of hours reasonably spent on the case by a reasonable hourly rate." *See Shuette*, 124 P.3d at 549 & n.98 (quoting *Herbst v. Humana Health Ins. of Nevada*, 781 P.2d 762, 764 (Nev. 1989)); *see also Sobel v. Hertz Corp.*, 53 F. Supp. 3d 1319, 1325-26 (D. Nev. 2014). Nevada law also establishes the required showing to substantiate the attorneys' fees sought. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 827 (9th Cir. 2009). Requests for attorneys' fees must be supported by affidavits or other appropriate evidence. *See, e.g., Miller v. Wilfong*, 119 P.3d 727, 730 (Nev. 2005); *see also N.R.C.P.* 54(d)(2)(B). In most cases, the lodestar figure is a presumptively reasonable fee award. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).

The lodestar's reasonableness determinations are guided the factors listed in *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 33 (Nev. 1969): "(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived." Courts may also consider the prevailing market norms. *Miller v. Wilfong*, 119 P.3d 727, 730 (Nev. 2005)

Defendant requests that the Court calculate its fees based on the rate of \$180.00 per hour. Plaintiff does not dispute the reasonableness of this rate, but the Court will nonetheless review the reasonableness of the rates claimed. *See, e.g., Gates v. Deukmejian*, 987 F.2d 1392, 1401 (9th Cir. 1992).

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1 “Rate determinations in other cases in the District of Nevada have found hourly rates as much
2 as \$450 for partners and \$250 for an experienced associate to be the prevailing market rate in this
3 forum.” *Perrigo v. Premium Asset Servs., LLC*, 2015 WL 4597569, *10 (D. Nev. July 28, 2015); *see*
4 *also CLM Partners LLC v. Fiesta Palms, LLC*, 2013 WL 6388760, *5 (D. Nev. Dec. 5, 2013) (refusing
5 to calculate hourly rates between \$650 and \$400 for attorneys working “for a law firm with an excellent
6 reputation,” and instead calculating lodestar at hourly rate of \$450 for partner and \$250 for experienced
7 associates). Other Courts in this District have awarded rates as low as \$268 for partners and \$95 for
8 associates. *Home Gambling Network, Inc. v. Piche*, 2015 WL 1734928, *10-11 (D. Nev. Apr. 16, 2015).

9 The Court finds the rates requested by Defendant’s counsel, Attorney Jack Burden, are
10 reasonable for this forum and for the specific service he provided. Mr. Burden is a named partner of
11 his law firm and requests a rate significantly below market. Indeed, Defendant’s counsel is seeking a
12 rate lower than those found reasonable for associates. *See John Hancock Life Ins. Co. v. Jacobs*, 2014
13 U.S. Dist. Lexis 19283, *8 (D. Nev. Feb. 13, 2014) (calculating lodestar in interpleader case based on
14 hourly rate of \$300 for partner and \$250 for associate). Defense of this slip and fall case is not a matter
15 of extreme complexity that requires rare expertise, but Mr. Burden’s low rate reflects this fact.
16 Accordingly, the Court will calculate the lodestar with Defendant’s desired hourly rate of \$180 per hour.

17 Having decided the hourly rate that should be applied in this case, the Court turns to the hours
18 reasonably expended. “[T]he party seeking an award of fees should submit evidence supporting the
19 hours worked.” *CLM Partners LLC*, 2013 WL 6388760, at *6. If the Court finds the hours actually
20 expended excessive, it is within its discretion to trim them. *John Hancock*, 2014 U.S. Dist. Lexis 19283,
21 at *8 & n.2 (reducing as excessive .2 hours claimed for reviewing minute order). However, the Court
22 must provide an explanation for any reduction in the amount of fees. *See, e.g., Argentina Consul. Min.*
23 *Co. v. Jolley Urga*, 216 P.3d 779, 787 n.2 (Nev. 2009). “If opposing counsel cannot come up with
24 specific reasons for reducing the fee request that the district court finds persuasive, it should normally
25 grant the award in full, or with no more than a haircut.” *Moreno v. City of Sacramento*, 534 F.3d 1106,
26 1116 (9th Cir. 2008).

27 Mr. Burden’s affidavit reveals that he spent a total of 13.2 hours drafting Defendant’s settlement
28 conference statement, consulting with Defendant, and preparing for and attending the Settlement

1 Conference. Docket No. 32 at 6. The Court finds that 13.2 hours to accomplish these tasks is
2 reasonable, especially in light of other fee awards in this District arising out of similar settlement
3 conferences. *See CLM Partners LLC*, 2013 WL 6388760, at *7 (D. Nev. Dec. 5, 2013) (reducing hours
4 reasonably expended preparing for and attending settlement conference to 16.3 hours of work); *Aevoe*
5 *Corp. v. Shenzhen Membrane Precise Electron Ltd.*, 2012 WL 2244262, at *9-10 (D. Nev. June 15,
6 2012) (finding a total of 27.25 hours reasonably expended in preparing for settlement conference).

7 Overall, the Court finds the both Mr. Burden's hourly rate of \$180 and the 13.2 hours that he
8 spent preparing for and attending the Settlement Conference are reasonable. Therefore, the Court finds
9 Defendant's request for \$2,376 in attorneys' fees to be a reasonable request.

10 **III. COSTS**

11 The purpose of a settlement conference is to facilitate a settlement or to narrow the disparity
12 between the parties by the candid input of a neutral, disinterested judicial officer. This benefits the
13 parties and the Court by reaching a "just, speedy, and inexpensive" determination of an action.
14 Fed.R.Civ.P. 1. For these benefits to be realized, it is imperative that both plaintiff and defendant arrive
15 at a settlement conference with an open mind and a genuine willingness to meaningfully discuss the
16 strengths and weaknesses of each party's case. For these discussions to be meaningful, settlement
17 negotiations must take place in the physical presence of the parties and qualified representatives from
18 both sides. In the case of corporate parties, this requirement creates a risk of abuse as it drives up the
19 burdens and costs associated with conducting settlement conferences. To offset this risk, the Ninth
20 Circuit has held that, when an order scheduling a settlement conference requires the presence of a
21 corporate representative with full settlement authority, it is within a trial court's discretion to consider
22 the representative's costs in determining the sanction of a party for violation of that order. *Official*
23 *Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1396 (9th Cir. 1993).

24 Here, the Court's order required a corporate representative of Defendant to attend the Settlement
25 Conference with settlement authority up to the amount of Plaintiff's claim. *See* Docket No. 21 at 1.
26 Accordingly, it is within the Court's discretion to sanction Plaintiff in the amount of the costs incurred
27 by Defendant's representative, Tito Melara, in complying with the Court's order.

28 On November 4, 2015, Mr. Melara drove to, and parked his car at, Oakland International

1 Airport. Docket No. 29 at 17 (evidencing that Mr. Melara incurred \$44 in parking expenses for parking
2 his car for one day, five hours, and fifty-five minutes at Oakland International Airport). He then flew
3 from Oakland International Airport to McCarran International Airport. *Id.* at 12-13, 18 (showing that
4 Mr. Melara pre-paid \$95.97 in airfare round trip and incurred \$30.00 in personal Southwest charges).
5 Upon arriving in Las Vegas, Mr. Melara rode a cab to Hampton Inn, where he stayed for one night. *Id.*
6 at 19 (evidencing that Mr. Melara's lodging expenses amounted to \$245.28); *Id.* at 15 (showing Mr.
7 Melara's cab ride cost \$27.42 including a \$3.00 tip). That night, he ate dinner with Mr. Burden. *Id.* at
8 16 (evidencing an expense of \$73.78 for dinner). On November 5, 2015, Mr. Melara attended the
9 Settlement Conference and returned home. *Id.* at 17 (showing the time Mr. Melara drove his car out
10 of Oakland International Airport); *Id.* at 12 (claiming an expense of \$26.68 for the miles Mr. Melara
11 drove using his personal car). In total, Defendant claims it incurred \$543.13 in costs. *Id.* at 13.

12 With the exception of the Mr. Melara and Mr. Burden's \$73.78 dinner for two and Mr. Melara's
13 unexplained \$30.00 charge with Southwest, the Court finds these costs reasonable. Each expense relates
14 to transportation and lodging costs reasonably expended in order to make Mr. Melara's attendance of
15 the Settlement Conference possible. These "costs were unnecessarily incurred because of [Plaintiff's]
16 failure to comply with the [Court's] order." *Official Airline Guides, Inc.*, 6 F.3d at 1397. "Awarding
17 [these] costs falls within the court's broad discretion to impose sanctions." *Id.* Accordingly, the Court
18 **SANCTIONS** Plaintiff in the amount of \$439.35, which represents the amount of Defendant's
19 reasonable costs incurred in attending the Settlement Conference.

20 Plaintiff and his counsel argue that the Court should trim any award of costs, contending that
21 Mr. Melara's stay in Las Vegas was unreasonably long. Docket No. 31 at 3-4. Their argument relies
22 on their interpretation of Mr. Melara's travel receipts, which they contend show that Mr. Melara stayed
23 in Las Vegas from November 2, 2015, to November 6, 2015. *Id.* at 3-4. However, Plaintiff's reliance
24 on this interpretation is misplaced as this interpretation confuses the date Mr. Melara paid an expense
25 with the date that the expense accrued. For example, merely because Mr. Melara pre-paid for his flight
26 on November 2, 2015, does not mean that he flew to Las Vegas on that day. Further, the receipts
27 submitted by Defendant clearly demonstrate that Mr. Melara was only in Las Vegas over night. *See*
28 Docket No. 29 at 17, 19. Therefore, the Court finds this argument unpersuasive.

1 **IV. CONCLUSION**

2 Accordingly, the Court **SANCTIONS** Plaintiff and his counsel, jointly and severally, in the
3 amount of \$2815.35, which represents (1) \$2,376 in attorneys' fees based on the 13.2 hours that Mr.
4 Burden reasonably expended at \$180 per hour and (2) \$439.35 in reasonable costs that Defendant
5 incurred in attending the Settlement Conference. This monetary sanction shall be paid to Defendant's
6 counsel no later than January 22, 2016. Plaintiff shall file a Notice of Compliance on the Docket no
7 later than January 22, 2016.

8 IT IS SO ORDERED.

9 DATED: January 7, 2016.

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NANCY J. KOPPE
United States Magistrate Judge
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